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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re)	CASE NO. 13-03755-MM7
WILLIAM FRANCIS SLATTERY,	)	Chapter 7
JR.,	)	ADV. NO.
Debtor.)	
<hr/>	)	COMPLAINT TO AVOID AND
RICHARD M KIPPERMAN,	)	RECOVER PREFERENTIAL AND
CHAPTER 7 TRUSTEE,	)	UNAUTHORIZED POST-PETITION
Plaintiff,	)	TRANSFERS AND TO AVOID AND
	)	RECOVER FRAUDULENT
v.	)	TRANSFERS
MARK MAIDA,)	
)	
Defendant,	)	Dept.: 1, Rm. 218
	)	Hon. Margaret M. Mann

Comes now Plaintiff Richard M Kipperman, the Chapter 7 Trustee ("Plaintiff" or "Trustee") of the above-referenced bankruptcy estate of William Francis Slattery, Jr. ("Debtor" or "Slattery"), and alleges as follows:

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1 **I.**

2 **PARTIES**

3 1. On April 12, 2013 (“Petition Date”), the Debtor filed a voluntary petition
4 for relief under Chapter 7 of Title 11 of the United States Code (“Bankruptcy Code”) ¹
5 in the U.S. Bankruptcy Court for the Southern District of California (“Court”),
6 initiating the Chapter 7 case In re William Francis Slattery, Jr., Case No. 13-03755-
7 MM7 (“Bankruptcy Case”). That same date, Richard M Kipperman was appointed as
8 Chapter 7 Trustee of the Debtor’s Chapter 7 estate (“Estate”).

9 2. Plaintiff is informed and believes and thereon alleges that defendant
10 Mark Maida (“Maida”) is an individual who at all times mentioned herein was a
11 resident of the State of California.

12 **II.**

13 **JURISDICTION**

14 3. This Court has jurisdiction over the parties and subject matter of this
15 proceeding pursuant to 28 U.S.C. §§157, 1334 and 2201 as well as General Order
16 312-E of the U.S. District Court for the Southern District of California. This action is
17 commenced pursuant to Sections 542, 547, 548, 549, 550, and 551; 28 U.S.C. §
18 2201(a); California Civil Code §§ 3439.04(a), 3439.05(a), 3439.07, and 3439.08; and
19 Rules 7001(1) and (9).

20 4. This Court may hear and determine the instant proceeding and enter
21 appropriate orders and judgments pursuant to 28 U.S.C. § 157(b)(1) and (2). This
22 proceeding relates to the Bankruptcy Case and is a core proceeding as set forth in 28
23 U.S.C. §157(b)(1) and (2)(A)(E)(F)(H) and (O) in that it seeks to, among other things,
24 (a) avoid a prepetition transfer of Estate property, which affects the administration and
25 liquidation of assets of the Estate; (b) avoid preferential, fraudulent, and/or voidable
26 transfers; and (c) obtain an accounting and turnover of property of the Estate.

27 _____
28 ¹ Unless otherwise indicated, all “Chapter” and “Section” references are to the Bankruptcy Code and all “Rule”
references are to the Federal Rules of Bankruptcy Procedure, Rules 1001 – 9037.

9. Plaintiff is informed and believes and thereon alleges that one such payee receiving transfers from the Debtor through Grosslight was the Defendant.

10. Plaintiff is informed and believes and thereon alleges that there were at least two such transfers involving the Defendant, one occurring before the Petition Date and one occurring after the Petition Date.

11. Plaintiff is informed and believes and thereon alleges that on or about March 8, 2013, or otherwise with the 90 days immediately preceding the Petition Date, Grosslight paid the Defendant \$120,000 by remitting a cashier's check to the Defendant in the amount of \$120,000 (the "\$120,000 Transfer").

12. Plaintiff is informed and believes and thereon alleges that after the Petition Date, Grosslight paid the Defendant \$100,000 by remitting a cashier's check to the Defendant in the amount of \$100,000 (the "\$100,000 Transfer").

13. Plaintiff is informed and believes and thereon alleges that Grosslight made \$120,000 Transfer and \$100,000 Transfer at the Debtor's direction.

14. Plaintiff is informed and believes and thereon alleges that the \$120,000 and \$100,000 amounts transferred from Grosslight to the Defendant were (1) monies that Grosslight received from the Debtor; and (2) monies owed back to the Debtor. In that regard, the monies transferred were property of the Debtor.

IV.

FIRST CLAIM FOR RELIEF

(To Avoid and Recover Preferential Transfer)

15. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 14, inclusive, as though fully set forth herein.

16. Plaintiff is informed and believes and thereon alleges that prior to the \$120,000 Transfer, Grosslight owed the Debtor \$120,000 for funds the Debtor had previously transferred to Grosslight.

17. Plaintiff is informed and believes and thereon alleges that the \$120,000 Transfer was for or on account of antecedent debt owed by the Debtor before such

1 transfer was made, as defined in Section 547.

2 18. Plaintiff is informed and believes and thereon alleges that the \$120,000
3 Transfer was made while the Debtor was insolvent.

4 19. Plaintiff is informed and believes and thereon alleges the \$120,000
5 Transfer occurred within the preference period as defined in Section 547.

6 20. Plaintiff is informed and believes and thereon alleges that the \$120,000
7 Transfer enabled the Defendant to receive more from the Estate than he would receive
8 as a creditor if (a) the Bankruptcy Case were a case under Chapter 7, (b) the transfer
9 had not been made, and (c) the Defendant received payment of such debt to the extent
10 provided for by the provisions of the Bankruptcy Code.

11 21. Plaintiff is informed and believes and thereon alleges that other payments
12 or transfers may have been made to the Defendant, directly or indirectly from the
13 Debtor, within the 90 days immediately preceding the Petition Date. Such payments
14 or transfers are unknown to Plaintiff at this time and Plaintiff will amend his
15 complaint to reflect such transfers at such time as the information becomes available
16 to him.

17 22. Pursuant to Section 550(a), to the extent that a transfer is avoidable under
18 Section 547, Plaintiff may recover the value of the property transferred from the initial
19 transferee of such transfer, or the entity for whose benefit the transfer is made, or any
20 immediate or mediate transferee of such initial transferee.

21 **V.**

22 **SECOND CLAIM FOR RELIEF**

23 **(To Avoid and Recover Fraudulent Transfer)**

24 23. Plaintiff incorporates herein by reference the allegations in paragraphs 1
25 through 14, inclusive, as though fully set forth herein.

26 24. Plaintiff is informed and believes and thereon alleges that the Debtor
27 received less than a reasonably equivalent value in exchange for the \$120,000
28 Transfer.

25. Plaintiff is informed and believes and thereon alleges that the Debtor made the \$120,000 Transfer while he was insolvent or he became insolvent as a result of such \$120,000 Transfer.

26. Plaintiff is informed and believes and thereon alleges that, at the time of the \$120,000 Transfer, the Debtor was engaged or was about to engage in a business or a transaction for which his remaining assets were unreasonably small in relation to the business or transaction.

27. Plaintiff is informed and believes and thereon alleges that, at the time of the \$120,000 Transfer, the Debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

28. By reason of the foregoing, the Plaintiff may avoid the \$120,000 Transfer pursuant to Section 548(a)(1)(B).

29. Plaintiff is informed and believes and thereon alleges that other payments or transfers may have been made to the Defendant, directly or indirectly from the Debtor, within the two years immediately preceding the Petition Date. Such payments or transfers are unknown to Plaintiff at this time and Plaintiff will amend his complaint to reflect such transfers at such time as the information becomes available to him.

30. Plaintiff may recover damages on account of the transfers plus interest thereon at the maximum legal rate under Section 550.

VI.

THIRD CLAIM FOR RELIEF

(To Avoid and Recover Voidable Transfer)

31. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 14, inclusive, and paragraphs 24 through 30, inclusive, as though fully set forth herein.

32. Plaintiff may avoid the \$120,000 Transfer pursuant to Section 544(b) and California Civil Code §§ 3439.04(a)(2) and 3439.07.

1 M2's efforts to collect on the Arbitration Award, by hiding his assets, including the
2 \$120,000 of funds transferred to the Defendant through Grosslight.

3 40. Plaintiff is informed and believes and thereon alleges that, to enable the
4 concealment of his assets, the Debtor made a number of false oaths in connection with
5 his Bankruptcy Case, and then took a series of actions postpetition to further conceal
6 his assets.

7 41. Plaintiff is informed and believes and thereon alleges that the Debtor's
8 fraudulent intent is demonstrated in part by the Debtor's failure to disclose in his
9 original bankruptcy Statement of Financial Affairs Nos. 3 and/or 7 the \$120,000
10 Transfer.

11 42. Plaintiff is informed and believes and thereon alleges that the Debtor's
12 fraudulent intent is also demonstrated in part by other inaccurate and/or incomplete
13 disclosures in his bankruptcy Schedules, Statement of Financial Affairs, and 341a
14 Questionnaire. The nondisclosures hid the Debtor's property interests, including, but
15 not limited to, his interest in real property located at 6783 Heath Court, Carlsbad, CA
16 92011 and 15 W. Fairchild, Afton WY 83110.

17 43. As set forth in paragraph 8, Plaintiff is informed and believes and thereon
18 alleges that the Debtor used Grosslight as a conduit for funds to shield the Debtor's
19 assets from creditors. Plaintiff is informed and believes and thereon alleges that,
20 further demonstrating the Debtor's fraudulent intent, many of the payees receiving
21 funds through Grosslight included entities over whom Debtor exercised substantial
22 control or otherwise were insiders of the Debtor, including the Foster Schuler
23 Declaration of Trust dated August 19, 1981, BSlattery Real Estate Holdings, Inc.,
24 Terry Slattery, and Sophie Scarlett, LLC.

25 44. By reason of the foregoing, the Plaintiff may avoid the \$120,000 Transfer
26 pursuant to Section 548(a)(1)(A).

27 45. Plaintiff is informed and believes and thereon alleges that other payments
28 or transfers may have been made to the Defendant, directly or indirectly from the

1 Debtor, within the two years immediately preceding the Petition Date. Such payments
2 or transfers are unknown to Plaintiff at this time and Plaintiff will amend his
3 complaint to reflect such transfers at such time as the information becomes available
4 to him.

5 46. Plaintiff may recover damages on account of the transfers plus interest
6 thereon at the maximum legal rate under Section 550.

7 **VIII.**

8 **FIFTH CLAIM FOR RELIEF**

9 **(To Avoid and Recover Voidable Transfer)**

10 47. Plaintiff incorporates herein by reference the allegations in paragraphs 1
11 through 14, inclusive, paragraphs 24 through 30, inclusive, paragraphs 32 through 34,
12 inclusive, and paragraphs 36 through 46, inclusive, as though fully set forth herein.

13 48. Plaintiff may avoid the \$120,000 Transfer pursuant to Section 544(b) and
14 California Civil Code §§ 3439.04(a)(1) and 3439.07.

15 49. Plaintiff is informed and believes and thereon alleges that other payments
16 or transfers may have been made to the Defendant, directly or indirectly from the
17 Debtor, within the four years immediately preceding the Petition Date. Such
18 payments or transfers are unknown to Plaintiff at this time and Plaintiff will amend his
19 complaint to reflect such transfers at such time as the information becomes available
20 to him.

21 50. Plaintiff may recover damages on account of the transfers plus interest
22 thereon at the maximum legal rate under Section 550 and California Civil Code §
23 3439.08.

24 **IX.**

25 **SIXTH CLAIM FOR RELIEF**

26 **(To Avoid and Recover Voidable Transfer)**

27 51. Plaintiff incorporates herein by reference the allegations in paragraphs 1
28 through 14, inclusive, paragraphs 24 through 30, inclusive, paragraphs 32 through 34,

1 inclusive, paragraphs 36 through 46, inclusive, and paragraphs 48 through 50,
2 inclusive, as though fully set forth herein.

3 52. Plaintiff may avoid the \$120,000 Transfer pursuant to Section 544(b) and
4 California Civil Code §§ 3439.05(a) and 3439.07.

5 53. Plaintiff is informed and believes and thereon alleges that other payments
6 or transfers may have been made to the Defendant, directly or indirectly from the
7 Debtor, within the four years immediately preceding the Petition Date. Such
8 payments or transfers are unknown to Plaintiff at this time and Plaintiff will amend his
9 complaint to reflect such transfers at such time as the information becomes available
10 to him.

11 54. Plaintiff may recover damages on account of the transfers plus interest
12 thereon at the maximum legal rate under Section 550 and California Civil Code §
13 3439.08.

14 **X.**

15 **SEVENTH CLAIM FOR RELIEF**

16 **(To Avoid and Recover Unauthorized Postpetition Transfer)**

17 55. Plaintiff incorporates herein by reference the allegations in paragraphs 1
18 through 14, inclusive, as though fully set forth herein.

19 56. Plaintiff is informed and believes and thereon alleges that the \$100,000
20 Transfer constituted a transfer of property of the Estate.

21 57. Plaintiff is informed and believes and thereon alleges that the \$100,000
22 Transfer occurred without authorization by this Court or under the Bankruptcy Code.

23 58. Plaintiff is informed and believes and thereon alleges that the \$100,000
24 Transfer occurred without the receipt of any value, including services, after the
25 commencement of the Bankruptcy Case in exchange for such transfer.

26 59. Plaintiff is informed and believes and thereon alleges that other payments
27 or transfers may have been made to the Defendant, directly or indirectly from the
28 Debtor, after the commencement of the Bankruptcy Case without the receipt of any

1 value, including services, after the commencement of the bankruptcy case in exchange
2 for such transfer. Such payments or transfers are unknown to Plaintiff at this time and
3 Plaintiff will amend his complaint to reflect such transfers at such time as the
4 information becomes available to him.

5 60. Pursuant to Section 549, Plaintiff may avoid the \$100,000 Transfer.

6 61. Pursuant to Section 550(a), to the extent that a transfer is avoidable under
7 Section 549, Plaintiff may recover the value of the property transferred from the initial
8 transferee of such transfer, or the entity for whose benefit the transfer is made, or any
9 immediate or mediate transferee of such initial transferee.

10 **XI.**

11 **EIGHTH CLAIM FOR RELIEF**

12 **(For Turnover of Property of the Estate)**

13 62. Plaintiff incorporates herein by reference the allegations in paragraphs 1
14 through 14, inclusive, paragraphs 24 through 30, inclusive, paragraphs 32 through 34,
15 inclusive, paragraphs 36 through 46, inclusive, paragraphs 48 through 50, inclusive,
16 paragraphs 52 through 54, inclusive, and paragraphs 56 through 61, inclusive, as
17 though fully set forth herein.

18 63. Plaintiff is informed and believes and thereon alleges that Defendant
19 received the \$100,000 and \$120,000 Transferred, and has an affirmative duty to turn
20 over to Plaintiff such sums transferred.

21 64. Section 542(a) provides:

22 Except as provided in subsection (c) or (d) of this section, an entity, other
23 than a custodian, in possession, custody, or control, during the case, of
24 property that the trustee may use, sell, or lease under section 363 of this
25 title, or that the debtor may exempt under section 522 of this title, shall
26 deliver to the trustee, and account for, such property or the value of such
27 property, unless such property is of inconsequential value or benefit to the
28 estate.

26 65. Plaintiff is informed and believes and thereon alleges that Defendant is
27 not a custodian, as such term is defined in Section 101(11).

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66. Plaintiff is informed and believes and thereon alleges that Defendant is in possession of the 100,000 and \$120,000 Transferred.

67. Plaintiff is informed and believes and thereon alleges that the \$100,000 and \$120,000 Transferred is property of the Estate pursuant to Section 541.

68. Plaintiff is informed and believes and thereon alleges that the \$100,000 and \$120,000 Transferred is property that Plaintiff, as Chapter 7 Trustee of the Estate, may use, sell, or lease under Section 363.

69. Plaintiff is informed and believes and thereon alleges that the \$100,000 and \$120,000 Transferred is of consequential value or benefit to the Estate.

70. Defendants has failed or refused to turn over the Plaintiff \$100,000 plus \$120,000 to Plaintiff, and should be ordered to do so.

XII.

PRA YER

WHEREFORE, Plaintiff respectfully requests the entry of judgment as follows:

1. For the First Claim for Relief (To Avoid and Recover Preferential Transfer):

a. For a determination that the \$120,000 Transfer may be avoided and for recovery from Defendant, the entity for whose benefit the transfers were made, or any immediate or mediate transferee of Defendant, of the property transferred or the value of such property, in the amount of \$120,000, together with interest as allowed by law from the date of the transfer;

b. For reasonable attorneys' fees and costs incurred herein; and

c. For such other and further relief as this Court may deem just and proper.

2. For the Second Claim for Relief (To Avoid and Recover Fraudulent Transfer):

/ / /

- a. For a determination that the \$120,000 Transfer may be avoided and for recovery from Defendant, the entity for whose benefit the transfers were made, or any immediate or mediate transferee of Defendant, of the property transferred or the value of such property, in the amount of \$120,000, together with interest as allowed by law from the date of each transfer;
- b. For reasonable attorneys' fees and costs incurred herein; and
- c. For such other and further relief as this Court may deem just and proper.

3. For the Third Claim for Relief (To Avoid and Recover Voidable Transfer):

- a. For a determination that the \$120,000 Transfer may be avoided and for recovery from Defendant, the entity for whose benefit the transfers were made, or any immediate or mediate transferee of Defendant, of the property transferred or the value of such property, in the amount of \$120,000, together with interest as allowed by law from the date of each transfer;
- b. For reasonable attorneys' fees and costs incurred herein; and
- c. For such other and further relief as this Court may deem just and proper.

4. For the Fourth Claim for Relief (To Avoid and Recover Fraudulent Transfer):

- a. For a determination that the \$120,000 Transfer may be avoided and for recovery from Defendant, the entity for whose benefit the transfers were made, or any immediate or mediate transferee of Defendant, of the property transferred or the value of such property, in the amount of \$120,000, together with interest as allowed by law from the date of each transfer;

- 1 b. For reasonable attorneys' fees and costs incurred herein; and
- 2 c. For such other and further relief as this Court may deem just and
- 3 proper.
- 4 5. For the Fifth Claim for Relief (To Avoid and Recover Voidable Transfer):
- 5 a. For a determination that the \$120,000 Transfer may be avoided and
- 6 for recovery from Defendant, the entity for whose benefit the
- 7 transfers were made, or any immediate or mediate transferee of
- 8 Defendant, of the property transferred or the value of such
- 9 property, in the amount of \$120,000, together with interest as
- 10 allowed by law from the date of each transfer;
- 11 b. For reasonable attorneys' fees and costs incurred herein; and
- 12 c. For such other and further relief as this Court may deem just and
- 13 proper.
- 14 6. For the Sixth Claim for Relief (To Avoid and Recover Voidable Transfer):
- 15 a. For a determination that the \$120,000 Transfer may be avoided and
- 16 for recovery from Defendant, the entity for whose benefit the
- 17 transfers were made, or any immediate or mediate transferee of
- 18 Defendant, of the property transferred or the value of such
- 19 property, in the amount of \$120,000, together with interest as
- 20 allowed by law from the date of each transfer;
- 21 b. For reasonable attorneys' fees and costs incurred herein; and
- 22 c. For such other and further relief as this Court may deem just and
- 23 proper.
- 24 7. For the Seventh Claim for Relief (To Avoid and Recover Unauthorized
- 25 Transfer):
- 26 a. For a determination that the \$100,000 Transfer may be avoided and
- 27 for recovery from Defendant, the entity for whose benefit the
- 28 transfers were made, or any immediate or mediate transferee of

1 Defendant, of the property transferred or the value of such
2 property, in the amount of \$100,000, together with interest as
3 allowed by law from the date of each transfer;

4 b. For reasonable attorneys' fees and costs incurred herein; and

5 c. For such other and further relief as this Court may deem just and
6 proper.

7 8. For the Eighth Claim for Relief (For Turnover of Property of the Estate):

8 a. For an order requiring Defendant to turn over the \$100,000 and
9 \$120,000 Transferred funds to Plaintiff to administer for the
10 benefit of the Estate;

11 b. That Plaintiff be awarded reasonable attorney fees and costs of
12 suit; and

13 c. For such other relief as the Court deems necessary and proper.

14 Dated: May 8, 2018

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

17 By: /s/ Gary B. Rudolph

18 James P. Hill
19 Gary B. Rudolph
20 Kathryn A. Healy
21 Attorneys for Plaintiff,
22 Richard M Kipperman, Chapter 7
23 Trustee
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